HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No.: 220 of 1995
Reserved on: 20.7.2007
Decided on: 14.8.2007

Dhian Singh .....Appellant.

Versus

Hira Singh and others .....Respondents.

Coram:

The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting?

For the appellant: Mr.G.D. Verma, Senior Advocate, with Mr.Romesh Verma, Advocate.

For the respondents No.1 and 2: Mr.Vinay Thakur, Advocate.

V.K. Ahuja, J:

This is a regular second appeal filed by the appellant against the judgment and decree of the court of learned District Judge, Shimla, dated 2.8.1994, vide which appeal filed by the appellant as against the judgment and decree of the court of the learned Sub Judge, Chopal, dated 27.2.1991, dismissing the suit for declaration and permanent injunction filed by the appellant as against the respondents, was dismissed.

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[1]. Whether reporters of Local papers may be allowed to see the judgment?

Briefly stated the facts of the case are that the appellant as plaintiff filed a suit for declaration and permanent injunction as against respondents challenging the alienation made by defendant No.1, his father, in favour of defendant No.2, his sister, by way of gift deed dated 2.2.1989 executed by defendant No.1 in favour of defendant No.2. The deed was executed in respect of undivided 1/4th share in the land measuring 65-6 bighas situated in Chak Bodhana and it was alleged that the said gift deed was void and illegal since the property in question was Hindu undivided ancestral/coparcenery property and as such it could not have been gifted by defendant No.1. Defendants No.1 and 2 took up the plea that the gift deed was validly executed since the plaintiff had ceased to be joint owner-in-possession of the coparcenery property as he had relinquished his right in the coparcenery property in favour of his father, that is, defendant No.1 vide relinquishment deed dated 25.6.1969, after having received a sum of Rs.2,500/- from his father.

The suit was tried by the learned trial court and it was held that the suit property was ancestral as well as coparcenery and it was held that the gift deed could not have been executed by defendant No.1 in favour of defendant No.2. Further it was held that since the plaintiff had ceased to be a coparcener by execution of the relinquishment deed, he had no locus standi to file the suit and was estopped by his act and conduct from filing the suit and as such, he was not entitled to the relief claimed by him.

These findings were upheld by the learned First Appellate Court and the appeal was dismissed.

I have heard the leaned counsel for the parties and have gone through the record of the case.

The submissions made by the learned counsel for the appellant were that once the court had held that the property in question was ancestral and coparcenery and the father of the plaintiff was not competent to execute the gift deed in favour of defendant No.2, the relief of declaration and permanent injunction should have been granted in favour of the plaintiff. A further plea was also raised by the learned counsel for the appellant that since the plaintiff had allegedly received Rs.2,500/- at the time of execution of relinquishment deed, it could not be treated as relinquishment deed but a sale deed and since the plaintiff was not competent to alienate the suit land, applying the same principle that the deed was executed without the consent of other coparceners, the sale deed in question was void and accordingly the gift deed executed by defendant No.1 in favour of defendant No.2 can be termed as void and findings to the contrary declining the relief of declaration and permanent injunction are liable to be set aside.

On the other hand, the learned counsel for the respondents had submitted that both the courts below have rightly held that the appellant ceases to have his right in coparcenery property and once the courts have held that the plaintiff had no locus standi and was estopped from filing the suit, therefore, he was rightly declined the relief of declaration and permanent injunction.

On a perusal of the record of the case and on consideration of the arguments advanced at the hearing, it is clear that a new plea has been raised by the learned counsel for the appellant during the course of the arguments that

the relinquishment deed, allegedly executed by him in favour of defendant No.1, should be held to be sale deed since consideration has passed and as the plaintiff was not competent to execute the sale deed accordingly, it was void and similarly the gift deed in question was also void. A perusal of the impugned judgment passed by the learned Trial Court as well as by the learned First Appellate Court shows that there were no such pleadings of the plaintiff and no such issue was ever framed that it was not a relinquishment deed but a sale deed executed by the plaintiff, if so, what was the effect. This plea has been raised before this Court for the first time and this cannot be considered as to whether it was a sale deed and not relinquishment deed and what was the effect of it.

The learned counsel for the appellant had not raised any point during arguments which could show as to what document or evidence was not considered by the courts below which calls for reappraisal of the evidence by this Court. There are findings of fact recorded by both the courts below that the suit land was ancestral/coparcenery property of the plaintiff, defendant No.1 and legal representatives of his brother Ganga Ram and that the plaintiff was the son of defendant No.1, while the gift deed was executed by his father in favour of the sister of the plaintiff, that is, daughter of defendant No.1, namely, Sushila/defendant No.2. This fact also stands established that a relinquishment deed was executed by plaintiff in favour of defendant No.1 on 25.6.1969, while the gift deed was executed on 2.2.1989 and appellant had ceased to be a coparcener when gift deed was executed. However, it is clear that the relinquishment deed was executed by the plaintiff prior to the execution of the

gift deed and also prior to filing of the suit before the learned Trial Court on 12.1.1990. A perusal of the relinquishment deed Ext.DW-1/A clearly shows that the plaintiff had relinquished his rights in the coparcenery property and had also received a consideration for the same and there are findings of both the courts below that this relinquishment deed was validly executed by the plaintiff in favour of defendant No.1. Once the plaintiff had relinquished his rights whatever he had in the coparcenery property held by his father and other coparceners, he ceases to be a coparcener in the coparcenery property and has no right to challenge the subsequent transfer made by his father in favour of defendant No.2 since he was not a coparcener in the said property. There are concurrent findings of fact recorded by both the courts below on all these points and according to law there cannot be reappraisal of evidence by this court sitting in second appeal unless and until there was any perversity in the judgment, which is not so in the present case. There is nothing to show that the conclusions drawn by the courts below were erroneous, being contrary to the mandatory provisions of applicable law or contrary to the law pronounced by the Apex Court or based upon inadmissible evidence or no evidence as held by the Apex Court in **Kondipa Dagadu Kadam v. Savitribai Sopan Gujar and others, (1999) 3 Supreme Court Cases 722.**

The appeal was admitted by this Court on substantial questions of law formulated at page 7, which were as to whether the property in suit having been held to be undivided coparcenery property could not be gifted by respondent No.1 to respondent No.2, whether the plea of relinquishment raised on behalf of respondent has not been established and that the gift deed was illegal and void

and respondent No.1 was not competent to execute the same. All these questions do not arise in the present case since all these questions of fact have been duly determined by both the courts below and nothing was pointed out during the course of arguments that the findings of the courts below are based on inadmissible evidence or mis-appreciation of evidence and law and as such there is no merit in the appeal, which deserves to be dismissed and the same is dismissed accordingly. Parties are left to bear there own costs. Decree sheet be prepared accordingly.

August 14, 2007. **(V.K. Ahuja), J.**
(trs)